

RI BOARD OF ELECTIONS

MINUTES OF MEETING

NOVEMBER 18, 2004

The Board met at 10:00 a.m. to conduct hearings on matters regarding the November 2, 2004 general election. A quorum was present which included Chair Roger Begin, Vice Chair Thomas Iannitti, Commissioners Judith Bailey, John Daluz, Florence Johnson and Raymond Xavier. Acting Executive Director George Bowen and Legal Counsel Raymond Marcaccio were present, also.

The following minutes contain a summary of the hearings. Copies of the several complaints filed with the Board are attached and made a part of these minutes.

With regard to the first matter before the Board brought on by Lloyd R. Morse of Cranston:

- Petitioner withdrew complaint on 11/17/04.

With regard to the next matter before the Board brought on by Lori Turner of W. Glocester:

- Ms. Turner was not present for the hearing. However, Vice Chair Iannitti asked that a clarification with regard to Ms. Tuner's complaint be made for the record. Ms. Turner was concerned that her vote did not count because she submitted two ballots (state and local) into the voting equipment simultaneously as instructed by a poll worker.

Upon a review of the matter, the Board determined that the scanner was “down” for a short period of time and that voters were asked to deposit their ballots in a secured compartment of the blue bin. Once the equipment was back in working order, the polling officials scanned the ballots one-by-one. With this, the Board dismissed Ms. Turner’s complaint.

With regard to the next matter before the Board brought on by Gregory Hitchcock of W. Greenwich:

- The town’s solicitor, Town Council Vice Chair Robert Meehan and Canvassing Chair Florence Meehan, Robert Meehan’s wife, were in attendance. Shortly before the hearing, Mr. Hitchcock called the Board of Elections to say that he would not be able to attend the meeting due to a scheduling conflict. He asked that the Board go forward with the hearing. With this, Chair Begin asked Mr. Meehan to step forward and be sworn-in.
- Mr. Meehan stated that he operates a restaurant that delivers meals to the polls and that on election day he delivered the orders to the lunchrooms and left without anyone asking him to leave.
- Commissioner Bailey commented that the wearing of campaign buttons or “politicking” is not allowed by persons working at the polls and that this Board does not allow candidates or immediate family members of candidates who are on the ballot to work at the polls. (Note: Normally, the term “working at the polls” is taken to mean

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wardens, clerks or supervisors). She queried if it were appropriate for candidate Meehan to be “working at the polls” in his capacity of meal provider. Mr. Meehan assured her that he simply delivered the food and left. With this, Chair Begin offered that perception is an issue and that, perhaps, this matter is something that should not occur in the future. Without further Board discussion, Commissioner Xavier made a motion to dismiss the complaint. Seconded by the Vice Chair, the motion carried unanimously.

With regard to the next matter before the Board brought on by Andrew Bilodeau of South Kingstown:

- Mr. Bilodeau was not present and his attorney, Alan Gelfuso, called the Board of Elections earlier in the morning to say that he (Gelfuso) would not be attending the hearing. A staff member from Mr. Gelfuso’s office was unable to say if Mr. Bilodeau would attend the hearing. With this, Vice Chair Iannitti made a motion to dismiss the complaint. Seconded by Commissioner Xavier, the motion carried unanimously.

With regard to the next matter before the Board brought on by Violet Halpert of Providence:

- Ms. Halpert called the Board of Elections earlier in the morning to say that she was ill and unable to attend the hearing. She asked that her complaint be withdrawn.**

With regard to the next matter before the Board brought on by Kathryn Leonard of Newport:

- Ms. Leonard withdrew her complaint on November 17, 2004.**

With regard to the next matter before the Board brought on, separately, by J. P. Bedrosian and Gary Vierra of Cranston:

- The defendant in the matter, Ms. Cynthia Fogarty, asked the Board to hear the matter last, as her attorney and one of the complainants was not present as yet. The Board complied with her request.**

With regard to the next matter before the Board brought on by Scott Duckworth of Coventry:

- Mr. Duckworth called the Board of Elections on November 17, 2004 to say that he had a scheduling conflict. For this reason, he withdrew his request for a hearing.**

With regard to the next matter before the Board brought on by Marilyn Soscia of Warwick:

- Ms. Soscia withdrew her request for a hearing on November 17, 2004.**

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With regard to the next matter before the Board brought on by Jeffrey Toste of Providence:

- Attending the hearing were Mr. Toste accompanied by several witnesses, Providence City Solicitor Raymond Detorre, Jr. and Attorney Michael Lepizzera accompanied by his client, Senator Caprio.**
- Mr. Toste stated that he wrote to the Board for the purpose of sharing information with the Members and to suggest how the election process might be made better. He did not wish to challenge the election or file a complaint against his opponent, Senator Caprio.**
- With this, Chair Begin stated that, today's, meeting of the Board is set-up to hear complaints. The Board does hold public hearings from time-to-time and that these hearings would be the appropriate forum to share information of this type with the Board. With this, Vice Chair Iannitti invited Mr. Toste and members of the public to attend the Board's (future) work sessions re: making the election process better. Within two weeks, the Board expects to post a notice of a meeting where persons can share their concerns about the election process.**

- At this point, Mr. Lepizzera addressed the Members. He asked that the Board dismiss any complaint(s) in the matter against Senator Caprio. With this, Vice Chair Iannitti stated that he would make a motion to dismiss any complaint(s) against Senator Caprio but not the concerns of Mr. Toste. Commissioner Johnson seconded the motion. The motion carried without opposition.

With regard to the next matter before the Board brought on by E. Howland Bowen of Little Compton:

- Upon being sworn-in, Mr. Bowen proceeded to present his case. Mr. Bowen claimed that ballot question #2 should not have been on the November 2, 2004 ballot. It became apparent to the Board, rather quickly, that this might not be the appropriate forum/body to hear Mr. Bowen's arguments. The Members discussed briefly the matter of jurisdiction and that Mr. Bowen should probably raise his questions to the Supreme Court or the Office of the Secretary of State. Even if there were joint jurisdiction, the bodies responsible for hearing the matter would probably find that the complaint was not filed in a timely manner, that is, before November 2, 2004. With this, Vice Chair Iannitti made a motion to dismiss the complaint.

- At this time, Mr. Bowen asked that the Offices of the Attorney General and Secretary of State be requested by the Board to appear in front of the Board to give testimony in the matter. With this, Chair Begin responded that this Board would not take this kind of action. Going forward, Vice Chair Iannitti's motion to dismiss carried without opposition.

- At this time, Mr. Bowen asked that the record show his exception to the Board's decision. So noted.

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With regard to the next matter before the Board brought on by Donna Tocco-Greenaway of Cranston:

- Michael Lepizzera, attorney for Ms. Tocco-Greenaway asked to address the Board. On behalf of his client, Attorney Lepizzera withdrew her request for a hearing.

With regard to the next matter before the Board brought on by Daniel Grzych of Providence:

- Mr. Grzych was not in attendance to present his case. With this, Vice Chair Iannitti made a motion to dismiss the complaint. Seconded by Commissioner Johnson, the motion carried without opposition.

At this point, the Board recessed from 10:50 a.m. to 11:00 a.m. before taking up the last hearing of the day.

With regard to the final matter before the Board brought on by J. P. Bedrosian and Gary Vierra of Cranston (separate complaints, same issue):

- Mr. Bedrosian, Mr. Vierra, Ms. Cynthia Fogarty, Attorney Michael Lepizzera and Aram Garabedian were present for the hearing.
- The Board determined that they would incorporate the complaints of J. P. Bedrosian and Gary Vierra into one hearing. Both petitioners maintained that Cynthia Fogarty, Candidate for Cranston City Council, committed a felony when she altered a “sample” ballot by whiting-out her opponents name from the “ballot” and passing the campaign literature out to voters.
- The Board listened to the events which led up to the complaints being brought forth at today’s hearing. Mr. Vierra testified that he called Attorney Lepizzera to advise him that Ms. Fogarty needed to stop passing out the literature in question and that she was guilty of a felony by defacing a sample ballot. Attorney Lepizzera made the call to Ms. Fogarty to advise her of Mr. Vierra’s conversation. Ms. Fogarty testified that she contacted the Board of Elections and was told by certain staff members that it was “OK” to distribute her literature.
- At this time, Mr. Bedrosian addressed the Members. Citing 17-19-42, 17-19-43 and a similar case (Alves/Clarke) before the Board of Elections on 11/4/02 and 2/4/03, Mr. Bedrosian maintained that Ms. Fogarty was guilty of a felony and that the matter should be sent to the Attorney General’s Office for investigation.
- At this time, the Members discussed a need for a clarification of what constitutes an actual, sample ballot. Some queried if a facsimile is a sample ballot. Chair Begin offered that it is a matter of ambiguity and that the legislature must make clear what it means to deface a sample ballot.

- Some Members appeared ready to vote on the matter when Commissioner Daluz asked Ms. Fogarty to address the Board. Ms. Fogarty, an attorney, stated that there

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was no criminal intent in her actions. She felt she was exercising her first amendment right to free speech when she distributed the literature in question. Furthermore, she called the Board of Elections for guidance and was told this type of literature was permissible.

- Aram Garabedian addressed the Board. Involved in politics much of his life, Mr. Garabedian stated that he was present, today, to lend support to Ms. Fogarty. Mr. Garabedian maintained that many of his former fellow legislators have “marked-up” ballots in the past and not been guilty of a felony.

- At this time, Commissioner Xavier commented that he wants to maintain clarity and wants to vote the same way of the West Warwick matter (Alves/Clarke).

- Mr. Vierra commented that during the November 2, 2004 election, he advised Republican candidates not to “mark-up” ballots. He queried whether he can now tell candidates that they are free to do this in the future.

- Vice Chair Iannitti offered that the Members will be holding hearings after January. He suggested that the Board bring today's matter before the legislature for clarity.
- At this time, the Board asked Counselor Marcaccio to comment on the matter of Ms. Fogarty receiving incorrect information from Board staff members. Mr. Marcaccio responded that a person(s) seeking information can ask for something in writing or get legal advice and that case law states that if a person is given the wrong information, this does not excuse the person.
- Vice Chair Iannitti commented that Ms. Fogarty did not go out and willfully break the law.
- Without further Board discussion, Commissioner Xavier, for the second time, made a motion to handle this case in the same way that the Board handled the Alves/Clarke matter; that is, that the Board admonish the party involved (Ms. Fogarty) for altering the ballot. With this, Commissioners Bailey and Florence made and seconded the motion, respectively. The motion carried unanimously.

At this time, Chair Begin declared the hearings ended with regard to the voting on November 2, 2004. With this, the Board determined that the state and local boards were free to certify the results of the general election to the appropriate authorities.

Before adjourning for the day, the Board discussed a request for a recount for the Town of Tiverton. On November 16, 2004, the Town of Tiverton conducted a special election for a single bond issue and

thirty-four Town Charter Amendments. Mr. Christopher Cotta, a voter and taxpayer in Tiverton, filed a request for a recount with regard to question #1 due to a seventy-three-vote margin. Also, the Board expects to receive a request to recount question #9 due to a two-vote margin. Chair Begin asked the Acting Director to keep the Members informed on the possibility of conducting two recounts.

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At 11:32 a.m. and with no other business before the Board, Commissioners Bailey and Johnson made and seconded, respectively, a motion to adjourn for the day and to reconvene subject to the call of the Chair. The motion carried without opposition.

ATTEST: _____

Frances A. Keating, Coordinator, Special Projects date